IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5684 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BN NAIK

Versus

DY POLICE COMMISSIONER

Appearance:

MR RR MARSHALL for Petitioner

MR SP HASURKAR for Respondent No. 1

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 14/03/2000

ORAL JUDGEMENT

#. This petition is filed by the petitioner who was appointed as a constable by the respondent authority, thereafter on account of petitioner having remained absent from service for 94 days, the services of the petitioner came to be terminated by an order dtd.6.1.96.

It was against that order that the present Special Civil Application came to be filed by the petitioner. This Hon'ble Court while entertaining the said petition passed following order dtd.2.8.96:-

"Heard learned advocate Mr.Marshall for the petitioner. Mr.Marshall states that the petitioner shall be ready and willing to tender unconditional apology to the Respondents, and further file an undertaking before the Respondents to the effect that the petitioner shall henceforth render service regularly.

Notice to the Respondents returnable on 23rd August, 1996."

#. Thereafter, the respondent filed an affidavit in reply dtd.17.3.1997 and contested the petition. Looking to the order passed by this court on 2.8.96 the petitioner was asked to tender unconditional apology to the respondent and was also asked to file an undertaking before the respondent to the effect that the petitioner shall henceforth render service regularly. Mr.Marshall submitted that he has already filed an undertaking and has also tender unconditional apology to the respondent authority. Looking to the facts and circumstances of the case and more particularly to the facts and the grounds on which the petitioner had remained absent this court feels that the penalty of dismissal is to harsh a penalty to be imposed and hence the order dismissing the petitioner from service dtd.6.1.96 is hereby quashed and set aside. The petitioner is directed to be reinstated in the service, however to see that the end of justice are met. No order is made for the back wages. The petitioner shall be reinstated with continuity of service. In the aforesaid terms the petition is allowed. Rule is made absolute with no order as to costs.

kks